Filed 6/12/07 In re Melvin Z. CA2/1

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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

In re MELVIN Z., a Person Coming Under the Juvenile Court Law.	B190793 L.A.Super.Ct. No. FJ 36471)
THE PEOPLE, Plaintiff and Respondent, v. MELVIN Z., Defendant and Appellant.	

APPEAL from a judgment of the Superior Court of Los Angeles County. Cynthia Loo, Juvenile Court Referee. Affirmed.

Debbie M. Page, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown, Jr., Attorney General, Mary Jo Graves, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Lawrence M. Daniels and Sarah J. Farhat, Deputy Attorneys General, for Plaintiff and Respondent.

Melvin Z. appeals from the judgment entered after the juvenile court declared him a delinquent ward (Welf. & Inst. Code, § 602)[1] based on (1) its finding after a contested hearing that he had committed a lewd act on a child under 14 years old, and (2) his admissions pursuant to a negotiated disposition that he had unlawfully taken a vehicle (a felony) and dissuaded a witness from reporting a crime (a misdemeanor). (Pen. Code, §§ 288, subd. (a); 136.1, subd. (b)(1); Veh. Code, § 10851, subd. (a); all further undesignated section references are to the Pen. Code.) As agreed, the court set Melvin's maximum confinement time at 9 years and ordered him suitably placed.

Melvin, who was 13 years and 10 months old when he committed the lewd act, contends that the court erred in failing to make an express finding pursuant to section 26[2] and *In re Gladys R.* (1970) 1 Cal.3d 855, 858, 862-867 that he understood the wrongfulness of his conduct when he committed the proscribed act, and that substantial evidence does not support the implied finding. We reject the contention and affirm the judgment (order of wardship).

FACTS[3]

On May 8, 2005, Natalie R., then 11 years old, visited a friend at the friend's apartment. While Natalie waited for her friend in a bedroom, Melvin entered the room and touched Natalie's buttocks over her pants, reached around her waist, tried to unbutton her pants, and touched her vaginal area over her pants. In response, Natalie kicked Melvin in the groin, and he fell on the bed. Natalie's friend arrived, and the two girls left the room. While the girls were playing outside, Melvin yelled out the window that he

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1 "Except as provided in subdivision (b) [mandating trial as an adult for any juvenile 14 years of age or older who commits murder or specified forcible sex crimes], any person who is under the age of 18 years when he or she violates any law of this state . . . is within the jurisdiction of the juvenile court, which may adjudge such person to be a ward of the court." (Welf. & Inst. Code, § 602, subd. (a).)

2 As relevant, section 26 provides: "All persons are capable of committing crimes except those belonging to the following classes: [¶] One – Children under the age of 14, in the absence of clear proof that at the time of committing the act charged against them, they knew its wrongfulness. . . ."

3 Because Melvin does not challenge the judgment as it pertains to the two offenses he admitted, we discuss only the facts related to the lewd act and Melvin's related post-arrest statements. The facts come from the contested adjudication hearing at which the victim and a detective who interviewed the victim and Melvin testified for the prosecution, and Melvin testified in his defense.

would choke Natalie if she told her mother; he also threatened to put a broomstick up her buttocks if she told anyone. Natalie did not report the crime to her mother until several days later because she was afraid. Shortly thereafter, Natalie told a police detective about the crime.

On June 9, police arrested Melvin, who would turn 14 years old on July 1. The same detective who had interviewed Natalie interviewed Melvin after he waived his rights. (*Miranda v. Arizona* (1966) 384 U.S. 436.) Both orally and in his handwritten statement, Melvin admitted that he "started to lift up [Natalie's] shirt & her belly from her body. Then I started to get horny, then I was unbutt[on]ing her pants which she told me to stop . . . every time I touched her. Then she convinced me . . . to stop because her mom was coming & she button[ed] her pants, and she left. . . . I was thinking to have sex with her, but she told me stop. Then I felt that my penis was going up. I thought that I could make it through her but I co[uldn']t. So then I had all these emotions & they all drop[p]ed [sic] when she told [me] to stop & she left. I was very excited when I touched her [v]agina. I probably would have sex even [though] she didn't want to. *I know this is wrong & I will never do it again*. She was 11 yrs. [old.]" (Italics added.)

Immediately thereafter, the detective asked Melvin a series of questions from a "GLADYS R. QUESTIONNAIRE." As relevant, the questions and answers were as follows: "2. Do you know the difference between doing what's right and doing what's wrong? [A.] Yes sir[.] 3. Give me an example of something right to do. [A.] When you're stress[ed] out, take a shower and hang out with friends. 4. Give me an example of something wrong to do. [A.] Have sex without asking permission. 5. What happens to you when you do something wrong? [A.] Have sex without asking permission. [Sic.] 6. Do you know it is wrong to touch [a] girl's privates[?] [A.] Yes sir. 7. Did you know it was wrong to touch [a] girl[']s under 14 privates, *before you did it*[?] [A.] Yes sir. 8. Do you know it is wrong to help someone else [touch girls under 14 privates?] [A.] Yes sir. 9. If someone did this to you would it be wrong? [A.] Yes sir[.] 10. Were you ever taught that it was wrong to touch girls' privates[?] [A.] Yes sir[.] [B]y whom? [A.] [M]y step dad . . . . 11. What were you taught about it being wrong to

touch other girls' private parts?] [A.] Ask permission & to respect other people." (Italics added.)[4]

After the prosecution rested, Melvin moved to dismiss the petition pursuant to Welfare and Institutions Code section 701.1.[5] Melvin's counsel stated that his motion included "a combined *Gladys R.* issue." Counsel argued that both Melvin's post-*Miranda* statement to the detective and his answers to the *Gladys R.* questionnaire were insufficient to show that he understood that his acts were wrong on May 8, when the acts occurred, rather than on June 9 when he made the statements, and were equivocal even regarding his knowledge of wrongdoing on the latter date. Counsel further argued that although the answer to one of the questions related to Melvin's knowledge at the time the acts occurred, it was equivocal regarding what he considered "privates." The court denied the motion without making any express findings.

Melvin then testified in his own defense, denying that he touched Natalie at all, and claiming that he made the statement and answered the questionnaire only because the detective told him that if he did so he could go home. In rebuttal, the detective denied threatening or promising Melvin anything. The court found Melvin committed a lewd act on a child under 14 years old and declared him a delinquent ward.

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4 The juvenile court marked and received in evidence by reference only copies of Melvin's handwritten statement and answers to the *Gladys R.* questionnaire. At our request, the court held a hearing and received copies of those exhibits which it made a part of its record. We augmented the appellate record to include those documents, which we quoted in the preceding paragraphs.

A detention report, dated June 10, 2005, and filed with the court along with the petition on June 13, 2005, contained a different, shorter form entitled "GLADYS R. ISSUE" with some of the same questions but different answers, none of which related to the incident with Natalie. No one testified regarding this form, which was neither marked as an exhibit nor received in evidence.

5 "At the [adjudication] hearing, the court, on motion of the minor . . . shall order that the petition be dismissed . . . after the presentation of evidence on behalf of the petitioner has been closed, if the court, upon weighing the evidence then before it, finds that the minor is not a person described by [Welfare and Institutions Code] Section . . . 602. . . ." (Welf. & Inst. Code, § 701.1.)

DISCUSSION

Melvin contends that the court erred in failing to make an express finding that he understood the wrongfulness of his conduct when he committed the lewd act; that the evidence on this issue was too equivocal to show such understanding by clear and convincing evidence as required by section 26 and *In re Gladys R., supra*, 1 Cal.3d at p. 855; and that the court erred by reading the probation officer's social study and declaring him a ward before finding that he understood the wrongfulness of his conduct. These related contentions lack merit.

When a petition alleges that a minor under the age of 14 has violated a penal provision, the prosecution, to comply with section 26, must prove by clear and convincing evidence that the minor understood the wrongfulness of his conduct when he committed the proscribed act. (*In re Manuel L.* (1994) 7 Cal.4th 229, 232-234, 239; *In re Gladys R., supra*, 1 Cal.3d at pp. 858, 862-867.) "In determining whether the minor knows of the wrongfulness of his conduct, the court must often rely on circumstantial evidence [citation] including the minor's age, experience and understanding, as well as the circumstances of the offense including its method of commission and concealment [citation]." (*In re Jerry M.* (1997) 59 Cal.App.4th 289, 298.) The issue of the minor's comprehension of wrongfulness may be tried together with the issue of whether the minor committed an act bringing him within Welfare and Institutions Code, section 602 and the court can consider evidence presented to prove the latter issue in deciding the former. (*In re Cindy E.* (1978) 83 Cal.App.3d 393, 400-401.) On appeal, we review the court's implied finding that Melvin understood his acts' wrongfulness for substantial evidence. (*In re Jerry M., supra*, 59 Cal.App.4th at p. 298.)

We conclude that substantial evidence supports the court's implied finding that Melvin understood the wrongfulness of his conduct. First, contrary to Melvin's contention, an implied finding of knowledge of wrongfulness is sufficient, and the court did not err in failing to make an express finding on this issue. (*In re Jerry M., supra*, 59 Cal.App.4th at p. 298; *In re Cindy E., supra*, 83 Cal.App.3d at pp. 399-401; accord, *In re Paul C.* (1990) 221 Cal.App.3d 43, 52.) Second, contrary to Melvin's argument, his

statements to the detective expressly show that he knew at the time he committed the acts, the wrongfulness of his conduct in touching Natalie, specifically his affirmative response to the detective's question whether he knew the conduct was wrong "before he did it." Moreover, the totality of the statements, made only a month after the prohibited conduct, reasonably shows that Melvin knew the acts were wrong when he did them. Third, other evidence, including Melvin's threats to Natalie that he would choke her and ram a broomstick up her buttocks if she told anyone what he had done, circumstantially demonstrate that he knew the acts were wrong

Finally, although Melvin is correct that a juvenile court errs by reading the social study before the adjudication hearing (*In re Gladys R., supra*, 1 Cal.3d at pp. 859-862), he does not cite to any portion of the record to support his claim that the court did so here, nor does our reading of the record disclose that the court did so. Thus, we also reject this claim of error.

DISPOSITION

The judgment (order of wardship) is affirmed.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

VOGEL, Acting P.J.

JACKSON, J.*

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* (Judge of the L. A. Sup. Ct. assigned by the Chief Justice pursuant to art. VI, § 6 of the Cal. Const.)